IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.996 OF 2005
IN
WRIT PETITION NO.2232 OF 2004

Mr.Amichand A.Shah ..Applicant

V/s.

Bank of India & Anr. ..Respondents

Mr.Milind Vasudeo i/by S.J.Khera for the applicant.

Ms.Swati Deshpande i/by Bodhanwala & Co. for Respondent No.1.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 5.5.2005.

PC

. Heard.

2. In paragraph 5 of the Civil application following statement has been made.

> The petitioner submits that due to oversight and inadvertence the petitioner's Advocate could not notice that the above writ petition had been listed for final hearing before the Hon'ble Court on 24th February, 2005 and hence the petitioner and his Advocate could not remain present before the Hon'ble Division Bench when the said matter was called out for final hearing. The petitioner states that mistake occurred is through inadvertence and not deliberate. The petitioner is prosecuting his remedies deligently but as the placing of the writ petition was not noticed the petitioner and his Advocate could not

remain present.

3. In paragraph-8 it is stated thus :-

> The petitioner submits that the cause of action is surviving in the writ petition and the writ petition has not become infructuous.

4. It appears that the Advocate for the petitioner missed the case by inadvertence and he could not appear on 24.4.2005. That the cause of action survives is specifically stated in paragraph-8. No reply affidavit has been filed by the Respondent no.1.

5. There is no justifiable reason as to why the averments made in paragraphs-5 & 8 of the Civil application should not be accepted. We are thus satisfied that the petitioner’s Advocate was prevented by good cause in appearing before the Court on 24.4.2005 when the Writ petition was called out for hearing. It is settled law that good cause for non appearance of the petitioner or his Advocate makes out a ground for restoration.

6. We accordingly re-call the order dated 24.4.2005 and restore the Writ petition No.2232 of 2004 to the file.

7. Upon restoration of the Writ petition, the ad-interim order dated 5.3.2004 is also restored.

8. Writ petition is ordered to be posted for admission on 8.6.2005.

9. Civil application stands disposed of.

(R.M.LODHA,J)

(R.S.MOHITE,J)